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**FEDERAL ELECTION COMMISSION**

999 E Street, N.W.  
Washington, D.C. 20463

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FEDERAL ELECTION  
COMMISSION

2012 MAY 31 AM 10:00

**CELA**

**FIRST GENERAL COUNSEL'S REPORT**

**SENSITIVE**

Pre-MUR 523

DATE SUBMITTED: 8/16/2011

DATE ACTIVATED: 10/26/2011

EXPIRATION OF SOL: 4/5/2015 to 4/11/2015

**SOURCE:**

**RESPONDENT:**

American Hospital Association

**RELEVANT STATUTES  
AND REGULATIONS:**

2 U.S.C. § 434(f)  
2 U.S.C. § 441d(a)  
11 C.F.R. § 100.29  
11 C.F.R. § 104.20  
11 C.F.R. § 110.11

**INTERNAL REPORTS CHECKED:**

FEC Disclosure Reports Database

**FEDERAL AGENCIES CHECKED:**

None

**I. INTRODUCTION**

The American Hospital Association ("AHA"), a Section 501(c)(6) trade organization representing hospitals, health care systems, networks and other health providers, filed a ("Submission") regarding its failure to file 24-hour electioneering communication reports for two of its television advertisements costing a total of \$209,250.42 and its failure to include a complete disclaimer in one of those advertisements.

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We now

recommend that the Commission accept the attached, signed conciliation agreement, which includes an \$11,000 civil penalty, and close the file in this matter.

**II. FACTUAL AND LEGAL ANALYSIS**

According to the Submission, in April 2010, shortly after the passage of the Patient Protection and Affordable Care Act ("PPACA"), the AHA sponsored a series of television advertisements thanking 16 members of Congress for their support of the legislation. The script for the advertisements read:

Dear Congressman/Congresswoman X. Thank you for voting to cover my daughter, despite her preexisting condition. Thank you for making sure my dad, my company, my family and 32 million people like us will finally be able to afford health coverage. Thank you Congressman/Congresswoman X. Thank you for doing what was right and not what was easy. Thank you for giving Americans access to quality health coverage we can count on. From all of us. Thank you.

Submission at 2.

The AHA aired the ads in the districts of Representatives Baron Hill (Indiana 9<sup>th</sup>) and John Boeeler (Ohio 16<sup>th</sup>) within 30 days of their respective primary elections. Under the Federal Election Campaign Act of 1971, as amended ("the Act"), an "electioneering communication" is a "broadcast, cable or satellite communication" that: (1) refers to a clearly identified candidate for Federal office; (2) is made within 60 days before a general election or 30 days before a primary election; and (3) is targeted to the relevant electorate. 2 U.S.C.

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1 § 434(f)(3)(A)(i); 11 C.F.R. § 100.29(a). A "clearly identified candidate" means that the  
2 candidate's name, nickname, photograph or drawing appears, or the identity of the candidate  
3 is otherwise apparent through an unambiguous reference. 11 C.F.R. § 100.29(b)(2). A  
4 communication is "targeted to the relevant electorate" when it can be received by 50,000 or  
5 more persons in the district the candidate seeks to represent. 11 C.F.R. § 100.29(b)(5).

6 The advertisements at issue referred to Representatives Hill and Bocchieri by name and  
7 were broadcast on television in their congressional districts within 30 days of their respective  
8 2010 primary elections. Accordingly, the ads satisfy the requirements for electioneering  
9 communications. See 2 U.S.C. § 434(f)(3)(A)(i).

10 Under the Act, every person who makes aggregate disbursements exceeding \$10,000  
11 for the cost of producing and airing electioneering communications during any calendar year  
12 must disclose information regarding the communication within 24 hours of each disclosure  
13 date. 2 U.S.C. § 434(f); 11 C.F.R. § 104.20. According to the Submission, the AHA spent a  
14 total of \$209,250.42 on the Hill and Bocchieri ads. Submission at 2. Because the AHA did not  
15 timely file 24-hour electioneering communication reports in connection with the ads, the  
16 AHA violated 2 U.S.C. § 434(f).

17 The Submission also disclosed that the Bocchieri advertisement contained an  
18 incomplete disclaimer. The Act requires that electioneering communications contain  
19 disclaimers. 2 U.S.C. § 441d(a). The communications, if not authorized by a candidate, must  
20 clearly state the name and permanent street address, telephone number, or World Wide Web  
21 address of the person who paid for the communication, and state that the communication is  
22 not authorized by any candidate or candidate's committee. 2 U.S.C. § 441d(a)(3); 11 C.F.R.  
23 § 110.11(b)(3). Additionally, if the communication is transmitted by television, that

1 statement must include an audio statement by the person who paid for the communication that  
2 he or she is responsible for the content of the ad. The disclaimer must be conveyed by a full  
3 screen view of a representative of the political committee or other person making the  
4 statement in voice-over and must also appear in writing on the screen for at least four seconds.  
5 2 U.S.C. § 441d(d)(2); 11 C.F.R. § 110.11(c)(4). The disclaimer in the Boccieri ad included  
6 only a written disclaimer stating "Paid for by the American Hospital Association." See  
7 Submission at 2. Consequently, because the Boccieri ad did not contain the required audio  
8 statement or the full screen view, and the written disclaimer did not include the AHA's  
9 permanent street address, telephone number, or World Wide Web address and state that the  
10 communication is not authorized by any candidate or candidate's committee, the AHA  
11 violated 2 U.S.C. § 441d(a).

12 The AHA acknowledges that it violated the Act by not filing the required 24-hour  
13 electioneering communication reports for the Hill and Boccieri advertisements and by not  
14 including a complete disclaimer in the Boccieri advertisement. According to the Submission,  
15 the ads were "timed to coincide with the passage of the PPACA, not the election calendar."  
16 Submission at 3. The Submission further states that the AHA had not previously sponsored  
17 electioneering communications and that the violations were unintentional. *Id.* The AHA also  
18 stated that in October 2010 it properly reported electioneering communications it sponsored  
19 before the 2010 general election. *Id.* See 24 Hour Notice of Disbursements/Obligations for  
20 Electioneering Communications filed by the AHA on October 19, 2010.

21 The AHA represents that upon discovery of these violations, it conducted a review of  
22 its 2010 grassroots advertising program, through counsel, to ensure that no additional  
23 reporting requirements were missed and that it has taken remedial measures to bolster its

1 compliance activities. Submission at 2. Specifically, the AHA states that it “developed a new  
2 and more rigorous compliance protocol” and “is in the process of hiring additional staff with  
3 relevant compliance experience who will manage internal compliance activities with the  
4 assistance of outside counsel.” *Id.* at 2-3.

5 The AHA had not yet filed the electioneering communication reports at issue as of the  
6 date of the Submission, on the basis that:

7 The articulated purpose of the 24-hour electioneering communication reporting  
8 requirement is to provide voters with real-time information about political spending,  
9 so that they can judge the advertisers’ credibility and motives. See H.R. Rep. 107-  
10 131(I), at 43 (July 10, 2001). Because the 2010 primary elections at issue here have  
11 long since passed, filing the electioneering reports at this time would not seem to  
12 achieve the Act’s purpose.

13  
14 Submission at 3. In its submission, however, the AHA asked that the Commission “provide  
15 guidance on how it can best cure this omission.” Submission at 3. We subsequently asked  
16 the AHA to file the missing electioneering communication reports -- and the AHA did so.

17 **III.**

We recommend accepting the attached, signed conciliation agreement.

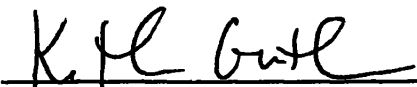
**IV. RECOMMENDATIONS**

- 1) Open a MUR;
- 2) Accept the attached conciliation agreement with the American Hospital Association, prior to a finding of reason to believe;
- 3) Approve the appropriate letter;
- 4) Close the file.

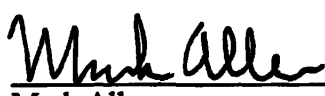
Anthony Herman  
General Counsel

Daniel A. Petalas  
Associate General Counsel  
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5-29-12  
Date

  
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